

Notice of Allowability

Application No.

10/774,742

Examiner

Carl H. Layno

Applicant(s)

CLASSEN ET AL.

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Papers filed on May 15, 2007.
2. ☒ The allowed claim(s) is/are 1-61.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment and two-month extension of time, which were received by the Office on May 15, 2007.

2. Claim 62 is canceled. Claims 63-70 are withdrawn. Claims 1-61 are active.

Priority

3. This application is in condition for allowance except for the presence of claims 63-70 directed to the structure of a radio-frequency (RF) cannula are non-elected without traverse. Accordingly, claims 63-70 have been cancelled. See Examiner's Amendment below.

Drawings

4. The replacement drawing for Fig.4B was received on May 15, 2007. These drawings changes are approved by the Examiner.

Claim Objections

5. In view of the applicant's modifications to the claims, the Examiner is withdrawing the objections which were made against claims 2, 13, 14, and 30 in the last Office action.

Claim Rejections - 35 USC § 112

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6. In view of applicant's modifications to the claims and Applicant's cancellation of claim 62, the Examiner is withdrawing the 35 U.S.C 112 rejections which were made against claims 8-11, 30-62, 42, and 43 in the last Office action.

Response to Arguments

7. Upon further reconsideration of applicant's arguments regarding the applicability of the Silberstone et al (US 5,052,391), Greengrass et al (US 5,976,110), and Smith (US 6,010,467) references, the Examiner is withdrawing the 35 U.S.C 103(a) rejections using these patents, which were made against claims 1, 2, 6-12, 24-26, 30-41, 44, 45, 49-52, and 57-59 in the last Office action.

Examiner's Amendment

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Stephen S. Mosher on July 18, 2007.

-Cancel claims 63-70.

Allowable Subject Matter

9. Claims 1-61 are allowed.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Leung et al (US 6,896,675) patent is cited for its pertinent disclosure of a nerve stimulation device using two percutaneous probes 6,11 (Figs.4-5) inserted by a cannula 13 (Fig.7), and teaching probes with spatula shaped tips (Fig.12(d) and Fig.12(e)). Unlike applicant's device, the probes of Leung et al do not verify locations of a peripheral nerve, nor are they curved in the manner claimed, nor do they output anesthetic drugs.

The Bonner et al (US 6,918,908) patent discloses a drug/anesthetic eluting probe having a spatula shape (Figs.4 and 5). Unlike applicant's probes, however, that of Bonner et al is not located next to a peripheral nerve, but rather on the heart. Location of the probe is achieved by video imaging rather than by impedance monitoring using an RF signal.

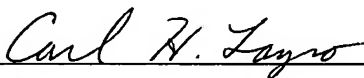
The Weiner (US 6,505,075) and Finch et al (US 7,069,083) patents are cited for their pertinent disclosure of percutaneous probes used for nerve stimulation and their probe location abilities. Unlike applicant's device, however, the devices of these patents lack the combination of cannula/probe structures incorporating both a "spatulate blade attached to a dorsal side of a curved...tip portion of the RF cannula".

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO
PRIMARY EXAMINER

CHL
7/18/2007